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PROVISIONAL SUMMARY RECORD OF THE 53rd MEETING

Held at Headquarters, New York,
on Friday, 4 November at 10 a.m.

President: Mr. BUTLER (Australia)

CONTENTS

FULL PARTICIPATION BY THE EUROPEAN COMMUNITY IN THE COMMISSION ON SUSTAINABLE DEVELOPMENT (continued)

ADOPTION OF THE AGENDA (continued)

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94-82041 (E)

The meeting was called to order at 10.55 a.m.

FULL PARTICIPATION BY THE EUROPEAN COMMUNITY IN THE COMMISSION ON SUSTAINABLE DEVELOPMENT (continued) (E/1994/L.51)

Draft decision in document E/1994/L.51

Mr. RUNGE (Germany), speaking on behalf of the Presidency of the Council of the European Union, requested the Economic and Social Council to adopt the draft decision in document E/1994/L.51.

Statement by the President

The PRESIDENT* said that, in adopting the draft decision, the Council had been guided by the specifications given by the European Community on the nature and extent of the competences transferred to the European Community by its member States on matters relevant to the work of the Commission on Sustainable Development. The European Community had provided full information on the legislation adopted by the European Community in relation to the relevant chapters of Agenda 21 as well as on the international agreements in those areas signed by the European Community, and a general indication, where possible, of the matters falling within its exclusive competence according to the Community Treaties.

In order to contribute to the efficiency of the work of the Commission, the European Community would update, as appropriate, the specifications provided. The Presidency of the Council of the European Union, acting on behalf of the European Community and its member States, would inform the Commission on Sustainable Development, before the substantive discussion of each specific agenda item in the course of its formal meetings, who would be the representative with respect to that item, and of any changes in that information resulting from subsequent developments. In that respect, the Economic and Social Council welcomed the clarification provided by the letter dated 2 November 1994 from the Presidency of the Council of the European Union.

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* This statement had been given full coverage in the summary record in accordance with the decision taken by the Council during the meeting.

It was the understanding of the Economic and Social Council that similar arrangements would apply in the consideration of any future requests for participation in the work of the Commission on Sustainable Development by any other regional or subregional economic integration organization.

While taking into account paragraph 13 of the report of the Secretary-General (E/1993/12), the Economic and Social Council, in adopting the current decision, acknowledged that the Commission on Sustainable Development, when organizing informal meetings, should be guided by the statement made by the Presidency of the European Union on behalf of the European Community and its member States.

Mr. RUNGE (Germany),* speaking on behalf of the Presidency of the European Union, said that the European Community and its member States considered that, given the nature and extent of the competences transferred to the European Community and given that those competences were closely interlinked and complementary to those of the member States, the European Community should be invited to participate in meetings of an informal nature in areas of its competence to which a member State of the European Community had been invited, so that discussions and the seeking of general agreement within the Commission on Sustainable Development would be all the more effective.

The European Community and its member States also wished to point out that, in cases of mixed competence, the member States could speak in support of, and/or add to the Community statement.

He requested that his statement should be given full coverage in the summary record of the meeting and that full coverage should also be given to the letter dated 2 November 1994 from the Presidency of the European Union addressed to the President of the Economic and Social Council, which read:

> "On behalf of the European Union, I have the honour to refer to the second paragraph of your statement during the resumed session of the Economic and Social Council in relation to the modalities of the participation by the European Community in the Commission on Sustainable Development. It is indicated therein that 'the Presidency of the Council

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* This statement and the text of the letter dated 2 November 1994 from the Presidency of the European Union have been given full coverage in the summary record in accordance with the decision taken by the Council.

of the European Union, acting on behalf of the European Community and its member States, will inform the Commission on Sustainable Development, before the substantive discussion of each specific agenda item in the course of its formal meetings, who will be the representative with respect to that item, and of any changes in that information resulting from subsequent developments'.

"The Presidency of the European Union has the honour to confirm that, in those matters where the European Community Treaty has not established an exclusive European Community competence, the member States of the European Community or the European Community itself may present their/its position on a particular agenda item relating to those matters.

"We would like to request that this clarification be conveyed to the States represented on the Economic and Social Council."

Ms. WILLIAMS-MANIGAULT (United States of America)* put forward the views of her Government on the draft decision and the statements made by the President of the Economic and Social Council and the Presidency of the European Union on that very important question. The United States welcomed and wholeheartedly supported the participation of the European Community in the work of the Commission on Sustainable Development, believing that the Community had an important role to play in the work of the Commission and its subsidiary bodies.

While it understood that the Community did not intend to exercise the same rights as members of the Commission, her delegation believed that the nature of the Community justified the specific rights accorded to it under the decision. Thus, if the European Community was to make the desired contribution to the work of the Commission, it was important that it should be able to submit proposals which could be put to a vote if any member of the Commission so requested. That right certainly did not accord the Community the right to submit procedural motions. The right to submit that kind of motion was tied directly to the right to vote, which would not be accorded to the European Community.

Similarly, the right to raise points of order implied the right to call for a vote since a decision on points of order which were challenged required a

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* This statement has been given full coverage in the summary record in accordance with the decision taken by the Committee during the meeting.

vote. However, under the proposed decision, the Community would have the right to raise a point of order only in cases where a final decision was about to be taken on a matter for which the European Community was the designated representative at the Commission, but where consultations among the member States of the Community were still in progress. On the other hand, it was expressly stated that the Community did not have the right to challenge the decision of the Chair on the limited point of order. Her delegation understood that the purpose of that provision was to give the European Community and its member States an opportunity to hold consultations, as appropriate, before a matter on which the Community was the designated representative at the Commission was voted on or decided by consensus.

The draft decision also addressed the participation in the Commission of other regional economic integration organizations that might eventually be established. The United States delegation welcomed that provision which would ensure that in future any organization of that type that wished to participate in the work of the Commission would enjoy exactly the same rights as the European Community.

Her delegation also welcomed the statement by the Presidency of the European Union on behalf of the European Community and its member States. That statement provided further guidance as to what was intended by the proposed decision and the views of the European Community and its member States on participation by the Community in informal meetings.

The statement further explained how the proposed decision was intended to operate in respect of areas of mixed competency. It made clear that in situations where the European Community, either through the European Commission or the European Union (Presidency), was the entity which members of the Commission on Sustainable Development should approach during negotiations on any item related to such areas, member States of the European Community were free to speak in support of the views of the Community or to supplement them where necessary. Her delegation understood that neither the European Commission nor the member States intended to contradict any statements by the European Union Presidency. It understood that such an approach was consistent with the statement by the President of the Economic and Social Council to the effect that in order to ensure the proper and efficient working of the Commission on Sustainable Development, all delegations on the Commission should be informed of

who would act as representative with respect to each agenda item. Furthermore, the United States delegation understood from the letter of 2 November 1994 from the European Union Presidency to the President of the Economic and Social Council that when the European Union member States were unable to arrive at a common position on an agenda item involving mixed competency, the European Union Presidency would notify the Commission on Sustainable Development that the members of the European Union would speak as individual States and not on behalf of the Union during negotiations on the item in question. In such instances the European Commission would not take the floor.

Her delegation also welcomed the statement by the European Union Presidency to the effect that the European Community would be invited to participate in meetings of an informal nature in areas within its competence to which a member State of the Community had been invited. That statement was not intended to cover every conceivable informal meeting but referred solely to meetings held by the Commission on Sustainable Development (for example Working Groups, etc.) or meetings called by the Chairman of the Commission for Sustainable Development. Of course, there might be a question as to whether the subject-matter to be discussed at such an informal meeting came within the competence of the European Community, but her delegation was confident that it would easily be resolved.

Her delegation welcomed the statement by the President of the Economic and Social Committee acknowledging that with regard to such informal meetings, the Commission on Sustainable Development would be guided by the statement made by the European Union Presidency on behalf of the European Community and its member States. While it understood that such a policy was not binding on the Commission for Sustainable Development, her delegation agreed that as a general rule it would facilitate discussions and help the Commission to reach general agreement.

As the statement by the President of the Economic and Social Council explained, the draft decision was based on the understanding that the European Community would not only provide details on the nature and scope of the competences delegated to it by the European Union member States and, where possible, on matters falling within its exclusive competence pursuant to the European Union Treaty, but it would also provide information about the representative it selects to deal with each agenda item. Thus, in some instances the members of the Commission on Sustainable Development would direct

their remarks to the European Community (because member States had delegated competence to it on a given issue), while in others they would call directly on the member States. Any information provided in that connection by the European Union Presidency would be essential for the effective work of the Commission on Sustainable Development since it would enable Commission members to know whom to approach in seeking general agreement on the item under discussion.

The draft decision and the statements of the European Union Presidency and the President of the Economic and Social Council reflected the enormous efforts that had gone towards ensuring the participation of the European Community in the work of the Commission on Sustainable Development while at the same time reflecting the sui generis character of the European Community. Taken together, they would ensure the effective functioning of the Commission on Sustainable Development and its subsidiary bodies while providing the European Community with the opportunity, together with members of the Commission on Sustainable Development and others, to meet the important challenges faced by the Commission in the years to come.

She requested that her statement should be given full coverage in the summary record of the meeting.

The PRESIDENT said that he would accede to the requests by the representative of Germany, on behalf of the Presidency of the European Union, and by the representative of the United States that their statements, the letter from the Presidency of the European Union and the statement by the President of the Council be reproduced in extenso.

Mr. RAMOUL (Observer for Algeria), speaking on behalf of the Group of 77 and China, said that the member countries of the Group and China would vote in favour of the draft decision but wished to make the following statement for the record.

The Group of 77 and China took it as understood that there was no question of according preferential treatment to the European Community. They therefore welcomed the President's statement to the effect that similar arrangements would apply to any request to participate in the work of the Commission on Sustainable Development which might be put forward by other regional or subregional economic integration organizations.

Moreover, they took it as a given that the participation of the European Community would be confined to matters over which it had competence by virtue of the Treaty of the European Union.

Mr. MONGBE (Benin) endorsed the statement by the Observer for Algeria on behalf of the Group of 77 and China. His delegation would vote in favour of the draft decision but would nevertheless welcome further clarification of various legal and technical points.

From a legal standpoint, the right to raise a point of order would appear to be tied to the right to vote. However, the draft decision expressly stated that the European Community would not have the right to vote.

Furthermore, there was an apparent contradiction between the provisions of paragraphs (b) and (c) of the draft decision, and it would be useful to know whether the same procedure would have to be applied whenever another organization asked to participate in the work of the Commission on Sustainable Development.

Lastly, members of the Commission were elected to membership. However, if the draft decision was adopted as it stood, the European Community would apparently acquire de facto permanent member status. He wished to know how that question would be resolved.

Mr. SHIBATA (Japan) said that his delegation wholeheartedly welcomed the participation of the European Community in the deliberations of the Commission on Sustainable Development and was confident that the European Community would be able to contribute constructively to its important work.

Japan understood that the draft decision and the related statements were not intended to provide the European Community with membership on the Commission on Sustainable Development, but rather to identify the specific modalities and manner of its participation in the Commission's work. Therefore, the proposed decision of the Economic and Social Council should not be construed as changing the status of the European Community as provided for in General Assembly resolution 3208 (XXIX) of 11 October 1974. That resolution had invited the European Economic Community to participate in the sessions and work of the General Assembly in the capacity of observer. His delegation would like to request a legal opinion from the Secretariat on the matter.

To help the European Community make a contribution to the work of the Commission on Sustainable Development, it should be given the right to submit

proposals, which any member State could then propose be put to a vote. The proposed decision to accord the European Community that right would not enable it to raise points of order, as those were tied directly to the right to vote, which it would not enjoy.

The participation of the European Community should not entail an increase in the representation to which the member States of the Community were entitled. For the efficient and proper working of the Commission on Sustainable Development, double representation of the European Community and its member States under the same agenda item must not be permitted, particularly in areas of mixed competence. In that connection, his delegation attached particular importance to the President's statement. As the latter had explained, the draft decision was based on the understanding that the European Community would provide the Commission on Sustainable Development not only with general specifications of the nature and scope of its competence and a general indication of the matters within its exclusive competence according to Community treaties, but also with information on who would represent it on each specific agenda item.

His delegation would like to receive some clarification as to whether the European Community would enjoy permanent member status on the Commission or be able to raise points of order.

The PRESIDENT, replying to the points raised, requested that the following points be reflected in the summary record of the meeting.

On the question of points of order, the draft decision expressly stated that the right to raise a point of order could be exercised only in the specific case where consultations were continuing among the European Community and its member States on a matter on which a final decision was about to be made and for which the Community was the designated representative on the Commission. All that meant was that it could request deferral of a decision until the Community and its member States were able to agree on a position. The Community would not have the right to raise a point of order within the meaning of the rules of procedure. Consequently, that limited right could not be construed as being tied to the right to vote. Moreover, the draft decision also expressly stated that the Community would not have the right to challenge the decision of the Chairman with regard to its point of order.

On the question of allowing other organizations to participate in the work of the Commission on Sustainable Development, it should be noted that the draft decision applied only to economic integration organizations to which their member States had transferred competence over a range of matters within the purview of the Commission on Sustainable Development, including the authority to make decisions binding on their member States in respect of those matters. In other words, those organizations must meet the same criteria as the European Community.

Lastly, the European Community would not have permanent member status since, as stated in the first line of paragraph (a) of the draft decision, it was not a member of the Commission on Sustainable Development. The draft decision was not designed to make the European Community a member of the Commission on Sustainable Development; it simply defined the modalities for its participation in the Commission's work.

Mr. MONGBE (Benin) requested that, for the sake of clarity, the opening sentence of paragraph (a) of the draft decision should read as follows: "The European Community is not a member of the Commission ...", and that the rest of the paragraph should be rephrased accordingly, without changing its substance. A clear distinction must be made between member status and participation in the Commission's work.

Ms. CARYANIDES (Australia) said that it was important for the European Community to be able to participate fully in the work of the Commission in those areas within its competence, and supported the views of the delegations of the United States and Japan in particular concerning the need to identify and designate the European Community representative to the Commission prior to any debate on issues involving the European Community. The draft decision granted the Community neither membership in the Commission nor double representation. The nature and extent of the competence of the European Community and that of its member States regarding questions addressed by the Commission remained to be specified, however.

Mr. SINGH (India) said that his delegation generally supported the draft decision, but had questions about the wording of paragraph (b) of the text. Elections to the Commission were conducted on a regional basis, and he wondered if it was in conformity with the Charter to grant to a regional or subregional economic integration organization like the European Community, whose

members were not members of the Commission, rights and privileges which its members would not enjoy as individuals.

The PRESIDENT said that there was a very clear distinction between the right to participate in the work of the Commission, which the European Community was requesting, and the rights of States elected to full membership in the Commission. Subregional and regional economic integration organizations meeting the same criteria as the European Community would enjoy exactly the same rights. They could participate in the work of the Commission, but would not be members. It could happen that, because they were not elected, no member of a regional or subregional economic integration organization would be sitting on the Commission. That would not prevent the organization from asking whether it could participate in the work of the Commission without becoming a member.

Mr. SINGH (India) wondered, if the draft decision was adopted, whether subregional or regional economic integration organizations would enjoy rights and privileges superior to those of a member that enjoyed observer status but was none the less not a member of the Commission.

The PRESIDENT referred to rule 69 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council, which stated: "The commission shall invite any Member of the United Nations that is not a member of the commission, and any other State, to participate in its deliberations on any matter of particular concern to that State" (para. 1) and "A subsidiary organ of the commission shall invite any State that is not one of its own members to participate in its deliberations on any matter of particular concern to that State" (para. 2). He pointed out that, unlike an elected member, "a State thus invited shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the commission or of the subsidiary organ concerned" (para. 3). In his view, it was thus entirely clear that the rights that would be granted to the European Community in authorizing it to participate in the work of the Commission would in no way be superior to those enjoyed by a Member State of the United Nations with observer status on the Commission.

Mr. SINGH (India) wondered whether Member States with observer status had the right to submit amendments or raise points of order and whether, under the rules, they could participate fully without being invited to do so.

The PRESIDENT said that Member States of the United Nations with observer status on the Commission enjoyed rights that were in no way inferior to those enjoyed by members of a subregional or regional economic integration organization. In the terms of the rule cited, the Commission "shall invite" (and not "may invite") any member of the United Nations who was not a member of the Commission to participate in the deliberations on any item of particular concern to that State. The same rule applied to subsidiary bodies.

Each State had the right to decide for itself what matters were of particular concern to it. A State invited by the Commission or one of its subsidiary bodies did not have the right to vote, but could submit proposals, meaning not only the original proposal but also any amendment thereto. In any case, it was clear that a proposal or amendment could only be brought to a vote on the request of a member of the Commission.

Mr. SYCHOU (Belarus) said that his delegation welcomed the concept of participation by the European Community in the Commission on Sustainable Development but that it had not had time to consider the draft decision in detail. He had questions, however, primarily on some legal matters. In his view, the text of the draft was somewhat ambiguous. It could be understood to mean that States which were members of a regional organization but not of the Commission could influence the conduct of the deliberations and the decision-making process. He entertained similar doubts about the submission of proposals and amendments. Moreover, rule 69 of the Rules of Procedure referred to by the President concerned States that were Members of the United Nations, which was not the case for the European Community. He suggested that rule 74 of the Rules of Procedure, concerning intergovernmental organizations, would apply.

Mr. SHIBATA (Japan) said that, in his understanding, the rights granted to the European Community under the draft decision before the Council would be identical to those enjoyed by States which were not members of a functional commission of the Council, but had observer status. Therefore, the draft would not grant the Community any advantage not also enjoyed by a State with observer status. He inquired whether, in the opinion of legal experts, the European Community had enjoyed the same rights and status as non-member States with observer status when it had participated in the work of the General Assembly or the Economic and Social Council.

Ms. WILLIAMS-MANIGAULT (United States of America) expressed her concern about the prevailing confusion regarding the full participation of the European Community in the Commission on Sustainable Development, and suggested that the debate should be postponed to allow delegations to review the draft decision in greater detail.

The PRESIDENT said that it would be preferable not to delay the Council's decision on the draft under consideration because most delegations favoured the participation of the Community in the work of the Commission.

Rule 74 of the Rules of Procedure, to which the representative of Belarus had drawn attention, applied to the European Community because it concerned an intergovernmental organization to which the General Assembly had accorded permanent observer status. With regard to the questions raised about the difference between the rights included in the draft decision and those enjoyed by non-member States with observer status and the rights which the Community had enjoyed thus far, he stressed that the European Community enjoyed all the rights granted to intergovernmental organizations. The draft decision was intended to define the specific modalities governing the participation of the European Community in the work of the Commission. Its rights would differ from those accorded to non-member States with observer status in that they could raise a point of order concerning a substantive issue. According to the draft decision before the Council, the Community could only raise a point of order of a procedural nature in order to clarify a specific point and to indicate that consultations were taking place.

Mr. SHIBATA (Japan) asked what was the point of the draft decision since the Community already participated fully in the work of the various United Nations bodies and had the right to submit proposals and amendments. If the Council deemed the decision necessary, it should specify that the European Community had the right to participate in the work of the Commission as an observer.

The PRESIDENT said that that would not be appropriate, since it would alter the specific nature of the draft, which set the limits of the Community's participation.

Mr. MONGBE (Benin), referring to paragraph (c) of the draft decision, asked what was the reason for mentioning the Council's decision 1994/-.

The PRESIDENT said that the number of the decision would be added when the Council had adopted it. The decision could be referred to by any other regional or subregional economic integration organization wishing to participate in the work of the Commission; that organization would receive the same treatment as the Community.

Mr. MONGBE (Benin) asked why, in that case, paragraph (b) of the draft began with the expression "With the approval of the Council". He feared that African organizations, for example, might not be accepted under the same conditions.

The PRESIDENT said that, while that concern was legitimate, the Council's decision was final; consequently, the procedure could not be applied automatically. Paragraph (c), however, clearly stated that the participation of a regional or subregional economic integration organization was "governed" (régie) by the Council's decision 1994/-, which meant that in principle the organization would be accepted.

Mr. MONGBE (Benin) pointed out that those provisions were applicable subject to the Council's approval; he considered the wording of paragraph (b) of the French text to be unacceptable.

The PRESIDENT noted that the English and French texts of the paragraph did indeed differ.

Mr. RUNGE (Germany), speaking on behalf of the Presidency of the European Union, said that the English text was the original version, and proposed to make the two texts compatible by bringing the French text into line with the English.

Mr. MONGBE (Benin) said that it was for the European Union to bring the two versions into harmony by altering the French text.

Mrs. CASTRO de BARISH (Costa Rica) said that the same problem applied to the Spanish text.

Mr. SYCHOU (Belarus) said that the wording of paragraph (a), third sentence, of the draft was ambiguous. He wondered whether it meant that by according to the European Community the right to raise a point of order, it followed that any member of the Community which was not a member of the Commission could reject a decision of the Commission. Under rule 69, paragraph 3, of the rules of procedure, a non-member State could submit

proposals which could be put to the vote. He suggested it would therefore be inappropriate to give additional rights to the European Community.

The PRESIDENT recalled that the European Community had distributed a document detailing the modalities of its participation as an intergovernmental organization. It was in no way attempting to broaden its rights; it was merely trying to define them in the context of rule 74. It should, however, be borne in mind that any request for participation was subject to approval by the Economic and Social Council.

Mr. SHIBATA (Japan) asked whether, by adopting the draft decision, the Council would not be creating a novel situation that might not be legally acceptable according to United Nations practice. The European Community should participate fully in the work of the Commission in the same way as non-member States. There was, however, a legal distinction between the status of full members of an elected body and that of observers; the latter could participate in substantive discussions but could not raise procedural questions. If the Council adopted the draft decision before it, that distinction would no longer be clear. His delegation would agree to the draft if it was certain that the procedure applied was legally in accordance with United Nations practice.

The PRESIDENT said that the representatives of Governments had to make a political decision; the law was no substitute for that decision.

Referring to the question raised by the Japanese delegation as to whether the adoption of the draft decision would be in accordance with United Nations practice, he confirmed that that would be the case since the rules of procedure contained provisions concerning observer status on the Commission. The observers could be Governments, non-governmental organizations, or, like the European Community, intergovernmental organizations. The European Community already enjoyed observer status in the General Assembly and was asking, by the draft decision before the Council, to be allowed to participate in the work of the Commission according to certain specified conditions set out in the President's statement and in the statement from the Presidency of the Community, namely, that it would have the right to raise a point of order only on grounds that consultations were under way, and not on substantive questions.

Recalling the confusion which had arisen in the Council over the various language versions of the draft decision, he assured members that the differing texts would be brought into line with the English original.

Mr. SHIBATA (Japan) said that his delegation would be unable to approve the draft without certain modifications, and wished to have more time to consider the matter.

Mr. MONGBE (Benin) said that it was not a matter of the various language versions being "brought into line" with the English text. One language should not be given greater importance relative to the others; they should all have the same value and the same precision. Referring to paragraph (b) of the draft, he suggested that the expression "with the approval of the Council" should be deleted.

Mr. SYCHOU (Belarus) proposed that consultations should be held on the draft because of the doubts and hesitations regarding the compatibility of the various language versions with the English text.

ADOPTION OF THE AGENDA (continued)

United Nations Interregional Crime and Justice Research Institute

The PRESIDENT informed the Council that arrangements were being made, in cooperation with the competent Italian authorities, for the transfer of the Institute from Rome to Turin; that would help to enhance coordination between training activities and the related research activities carried out by the United Nations system.

Mr. COLELLA (Italy) confirmed the information provided by the President.

Joint and co-sponsored United Nations programme on human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS)

The PRESIDENT recalled that by its resolution 1994/24, the Council had requested the President to organize consultations in order to facilitate the implementation of the joint programme on AIDS. He informed members that those consultations had begun the previous week.

The meeting rose at 1 p.m.